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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,774	06/26/2001	James E. Black JR.	70255	2703

22242 7590 11/15/2002

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CHICAGO, IL 60603-3406

EXAMINER

BARTZ, CLIFFORD T

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/891,774

Applicant(s)

BLACK ET AL.

Examiner

Clifford Bartz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 1-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-54, 62 and 64 is/are rejected.
- 7) ☒ Claim(s) 55-61 and 63 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Part III DETAILED ACTION

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flexible enclosure (including pleating) of claim(s) 64 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim(s) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 62 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim(s) 1 – 7 of U.S. Patent No. 6,289,822. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim(s) 45 recites an "...articulated railway car...at least two units..." It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct each railway car in two units, since it has been held

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that mere duplication of the essential working parts of a device involves only routine skill in the art. (St. Regis Paper Co. v. Bemis Co., 193 USPQ 8).

As to claim 54: the position of the perforations with respect to the panel edge is(are) constrained to be of a type determined by the application to which the railway car is put, and the position of the claimed invention(s) has no patentable novelty of and by themselves; and further that the contemplation of these positions is well within the capability of a routineer in the art.

As to claim(s) 62: it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the railway car of 6,289,822 with with an impermeable top portion, in order to have better control of the (“dirty”) air flowing to the inside of the car.

Specification

The abstract of the disclosure is objected to because it is identical to the abstract of the parent case 6,289,822. Correction is required. See MPEP 608.01(b).

Response to Amendment

Applicant's arguments filed Oct. 9, 2002 have been fully considered but are not deemed to be persuasive.

Applicant has requested reconsideration of the objection to the abstract on the grounds that the MPEP does not appear to proscribe identical abstracts in related cases. The following is a copy of the appropriate section of the MPEP:

"Guidelines..."

Background

The rules of Practice...

The content of a patent abstract should be such as to enable the reader thereof, regardless of his or her degree of familiarity with patent documents, to ascertain quickly the character of the subject matter covered by the technical disclosure and should include that which is new in the art to which the invention pertains."

The presentation of the application is such that a new and distinct invention is requested. The application does not conform with the guidelines (above) in that the abstract does not include that which is new in the art... (new in the art compared with the parent case 6,289,822). This is the way in which the MPEP proscribes identical abstracts in related cases.

Allowable Subject Matter

Claim(s) 55, 56, 57, 58, 59, 60, 61, 63, 64 would be considered allowable if rewritten to correct any objections; or overcome any applicable rejections, under 35 USC 112; and to include all the limitations of the base claim and any intervening claims.

Conclusion

1. THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Bartz whose telephone number is (703)308 - 2564. The examiner can normally be reached on Mondays thru Fridays from 8:30 am to 3:30 pm.

(clifford.bartz@uspto.gov) [Fax -(703)308 - 3519]

If attempts to reach the examiner by telephone are unsuccessful; a message may be left at the Group Receptionist, whose telephone number is (703) 308 - 1113 .

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder, can be reached on (703)308- 3421.

Any further inquiry of a general nature or relating to the status of this application may also be directed to the Group Receptionist, whose telephone number is (703) 308 - 1113.

Clifford T. Bartz


Examiner

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11/6/02

Summary

Total Claim(s) = 1 - 64
Canceled Claim(s) = 1 - 44
Rejected Claim(s) = 45 - 54, 62, 64
Objected Claim(s) = 55 - 61, 63


JACK LAVINDER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
11/13/02